



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Case No. S90-00056

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

CONSOLIDATED RAIL CORPORATION)

a/k/a CONRAIL,)

Defendant and)

Third Party Plaintiff,)

PENN CENTRAL CORPORATION,)

et al.,)

Third Party Defendants.)

-----/
The deposition of LARRY NEWLAND

Date: Thursday, January 28, 1993

Time: 1:25 p.m.

Place: 205 West Jefferson
Suite 312
South Bend, Indiana

Called as a witness by the
Plaintiff in accordance with the
Federal Rules of Civil Procedure,
pursuant to agreement entered into by
counsel for the respective parties.

Before Dorothy L. Hoade, CSR
Notary Public, State of Indiana

1
2 MR. PETER H. RUVOLO
3 U.S. Environmental
4 and Natural Resources
5 Division, Environmental
6 Enforcement Section
7 Department of Justice
8 P.O. Box 7611
9 Ben Franklin Station
10 Washington, D.C. 20044

11 For the Plaintiff;

12 MR. JAMES A. ERMILIO
13 Bingham, Dana & Gould
14 Suite 1200
15 1550 M. Street, N.W.
16 Washington, D.C. 20005

17 For Consolidated Rail Corporation;

18 MR. PIERCE E. CUNNINGHAM
19 Frost & Jacobs
20 2500 Central Trust Center
21 201 East Fifth Street
22 Cincinnati, Ohio 45202

23 For Penn Central Corporation.

24 + + + oOo + + +
25

I N D E X

THE DEPOSITION OF

LARRY NEWLAND

DIRECT EXAMINATION

By Mr. Ruvolo. Page 4

CROSS EXAMINATION

By Mr. Cunningham Page 30

CROSS EXAMINATION

By Mr. Ermilio Page 35

RECROSS EXAMINATION

By Mr. Cunningham Page 42

REDIRECT EXAMINATION

By Mr. Ruvolo. Page 48

E X H I B I T S

Plaintiff's Exhibit No. 1

Map of Conrail Elkhart yard. Page 4

+ + + oOo + + +

(Plaintiff's Exhibit No. 1 marked
for identification.)

LARRY NEWLAND

called as a witness by the Plaintiff, being first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RUVOLO:

Q Would you please state your full name, Mr.
Newland?

A Larry W. Newland.

Q And your address?

A (b) (6)

Q And your telephone number?

A (b) (6)

Q My name is Peter Ruvolo. We met just a few minutes
ago. I'm an attorney with the Justice Department
and we represent the Environmental Protection
Agency which has a suit going these days, a civil
suit involving Conrail and others.

On my left is Mr. Cunningham, who is the
attorney that represents Penn Central, and Mr.
Ermilio you know from Conrail.

Do you know or have any idea of why you're
here today in the sense of do you know anything
about this case and what it involves?

1 A Just something about the water. They've been
2 testing the water out there and the water is
3 supposed to be bad.

4 Q Do you live in the area?

5 A Yes.

6 Q Is your water bad?

7 A Don't know. I got black settlements in it, but
8 they said it's from the pipes. They tested our
9 water and said it's okay. We're on a suburban
10 utility, a well that supplies all the houses there
11 on Treasure Island, right across from the diesel
12 house.

13 Q Have you spoken with anybody prior to coming here
14 today, other than Mr. Ermilio --

15 A No.

16 Q -- about what this is all about?

17 A No.

18 Q Did you bring any records with you or do you have
19 any?

20 A No.

21 Q Do you have anything at home, any notes that you
22 keep?

23 A No.

24 Q We're going to ask a you few questions about the
25 situation out at the yard in Elkhart. If there is

1 anything you don't understand, please say so, and
2 we'll rephrase the question. If there is an
3 objection, you should still answer it, unless Mr.
4 Ermilio directs you not to. Okay?

5 A Okay.

6 Q If you need to take a break or something, just say
7 so and we'll work that out. Okay?

8 Tell us a little bit about yourself, your
9 education, for example.

10 A High -- well, I quit high school in my freshman
11 year and got a job on the railroad when I was
12 eighteen and then I got drafted, I got drafted in
13 -- I started the railroad in '66 and got drafted
14 in '68, and I got out of the Army in January of
15 '70 and I got my GED while I was in the Army.

16 Q What is a GED?

17 A Equivalent to high school graduate. I went to
18 school there when I was in Army, finished my high
19 school to get my high school diploma.

20 Q In '70, after you got out of the Army?

21 A Went back working on the railroad again. My
22 seniority went on. It was New York Central when I
23 started out. When I was in the Army, they changed
24 it to Penn Central, and when I got out it was Penn
25 Central in '70.

1 Q Mid-seventies, about '76 or '77?

2 A Changed to Conrail then.

3 Q You have been with the railroad ever since?

4 A Right, since '66, October of '66.

5 Q Can you tell us in chronological order, if you
6 would, what you started as with the railroad and
7 what other jobs you have had down through the
8 years?

9 A Started out, when I started out in '66, I started
10 out as a motor trucker, driving fork trucks and go
11 and get parts and stuff like that, material, fix
12 the cars at the rep track, and then I don't know
13 what the date was, but I took the setup as a car
14 man and worked all over the place because I was
15 the youngest man, so I worked various jobs,
16 inspecting cars and the train yard. You got
17 eastbound, westbound, and then you got receiving
18 yards. I worked in all of them, and then I worked
19 on the rep track and I was extra man on -- back
20 then, the older guys, the old timers with the more
21 seniority had the regular wrecker jobs, I was on
22 like the extra wrecker list. I went on
23 derailments with the wrecker. We used to go all
24 over the place.

25 Back then, they didn't have all these lines

1 closed. We used to go to Kankakee, all over the
2 place, Kendallville, used to do that.

3 Q It wasn't just concentrated within the Elkhart
4 yard?

5 A Hmm-umm.

6 Q Have you always been at Elkhart?

7 A Yes.

8 Q I guess in the older days, you were the lowest man
9 on the totem pole as far as seniority is
10 concerned?

11 A Yes, worked a lot of third tricks.

12 Q I'm sorry I interrupted you. Any other functions
13 that you performed?

14 A We got a cleaning track. We used to wash out
15 cattle cars and stuff like that, clean them out
16 back then. They don't have them no more. Back a
17 long time ago, many years ago, as a matter of
18 fact, down at the local yard, they used to feed
19 livestock. They used to unload them, unload the
20 livestock there and feed them. They don't do that
21 anymore, either.

22 Q Ever rustle any cattle, make any steaks at home?

23 A No.

24 Q At your job with Conrail, have you been taking any
25 training courses over the years? Did you go to

1 any seminars or did they send you to any institute
2 or someplace like that?

3 A I used to be a foreman, too, back then. I forget
4 what years. I was foreman for about five years
5 and went to these building classes, like in
6 Chicago, how to build the cars, stuff like that,
7 and took, I went to a couple of paint car
8 schools. See, I'm on the fire department too,
9 volunteer fire department right outside --

10 Q In the City of Elkhart?

11 A No, Baugo Township. That's the township that the
12 railroad is in. I'm on that, too. I went to two
13 tank car schools they had. I went to that. I
14 went with the Elkhart Fire Department, too. If
15 they had a case of tank car leaks or something
16 like that, we know how to shut them off and stuff.

17 Q That course that you took, was that sponsored by
18 Conrail or was that sponsored by the fire
19 department?

20 A That was sponsored by Conrail with the fire
21 department because Elkhart City has a Haz-Mat team
22 now. I don't know who sponsored it, if the fire
23 department sponsored it or Conrail sponsored it,
24 but Conrail --

25 Q Sent you?

1 A Yeah. They had -- Conrail employees had their
2 people at Elkhart City fire station because we
3 went to Elkhart City fire station for it and they
4 gave the seminar, and then they took us out to the
5 tank car, which was on Conrail property, and
6 showed all the fireman all that stuff.

7 Q How to take care of things?

8 A Yeah, how to turn things off.

9 Q When was this, about?

10 A Last one we had was probably '85 or '86. I'm
11 trying to think, somewhere around in there.

12 Q How often were they given? Were they given
13 annually?

14 A No. It might have been a little bit later than
15 that, '87 maybe. I can't remember the date. All
16 I know is I went to it.

17 Q How long did those classes last, like a couple of
18 hours a day or an evening?

19 A All day.

20 Q The whole day?

21 A Yeah. Then I went to, on my own I went to the
22 thing that Elkhart County, to the Elkhart County
23 building out on 33, they had a thing in case
24 Amtrak ever got a derailment and stuff like that,
25 showed us how to get into them and stuff, but

1 Conrail didn't send me. I went with the fire
2 department to learn myself to learn that.

3 They had people from Amtrak and stuff, their
4 officials from Amtrak there. They showed us that
5 our saws from the fire department wouldn't cut
6 through that stuff, different ways to pop the
7 windows out and everything like that. As a matter
8 of fact, all the county fire departments were
9 invited.

10 Q What to do in case of an emergency or a crash or
11 something?

12 A Right.

13 Q Did they also tell you about the various hazardous
14 materials, how to identify them?

15 A Yeah. We got a book. As a matter of fact, we got
16 books in our fire trucks and then we got books out
17 at the railroad, too, that tells you.

18 Q What kind of materials would be in the books? Can
19 you give us a couple of examples, in the way of
20 hazardous materials?

21 A They're marked by numbers on the side. There's
22 signs on the side of the tank cars if they're
23 loaded and stuff like that, then they got numbers
24 on them. Then you go into the book and identify,
25 if you want to identify what's in them tank cars.

1 Q There's a code to the numbers?

2 A Right. Then there's, like some of the tank cars
3 has got on the sides of them wrote what's in them,
4 like liquid gas or stuff like that.

5 Q Something flammable, something like that?

6 A Right.

7 Q How would you know what was in there, by the
8 code? Would there be a number, as well?

9 A You go through that book and there's a number. I
10 don't know the numbers right now, but there are
11 four numbers, usually four numbers on the thing
12 and you look at it, go through the book. I have
13 never had to go through the book to look.

14 Q And then the book would tell you how to react or
15 how to handle those chemicals if they were
16 involved in a spill or something of that nature?

17 A Right.

18 Q Have you had occasion during your career to be
19 involved with spills of hazardous materials?

20 A Yes.

21 Q Tank car spills?

22 A It wasn't spilling, it was venting out. The tank
23 was cracked. They say it came out of Burlington
24 Northern train.

25 Q When was that?

1 A I don't know the exact date. I know I've got a
2 plaque at home that says. I got a coat out of it
3 for helping out. I don't know what the date was.

4 Q Is that the one where they evacuated the --

5 A Yeah. They put a tone out on our car radio to
6 evacuate the place. I was on a Holmes crane,
7 which is a hundred-ton crane, at the time. I knew
8 we'd get called up there, probably. We did. They
9 wanted the boss to go up there by himself, put his
10 mask on and go up there, and I says, wait a
11 minute, so I went over and told our big boss.

12 I says, "You can cut me out," I says, "I
13 ain't going to let Clayton go up by himself. He
14 don't even know how to use a 'rebreather'."

15 Q What did you do to deserve this plaque?

16 A We went up there and put the Haz-Mat suit on and
17 they taped us all up, backed the train and picked
18 it up, picked the car up so -- it wasn't full. It
19 wasn't a load. It was a residue, the residue from
20 it.

21 Well, what it was doing was leaking through
22 the inner tank into like the insulation, then
23 there's an outer tank. What it was doing was
24 setting off fumes. I can't remember what the
25 stuff was, what was in it, but it was letting off

1 fumes that would make you sick or something like
2 that. I guess that is why they evacuated
3 everybody.

4 We picked it up, it sent all that liquid to
5 the other end, and then later that night they
6 brought the tank car people out there and then
7 they sucked it all out into barrels, what was left
8 in it.

9 Q Was there a hole in the tank car?

10 A Hm-umm. It was cracked. The inner tank they said
11 was cracked and then it was going into the
12 insulation between the inner tank and the outer
13 tank and the outer tank was cracked, too, and the
14 fumes were coming out and it was something
15 hazardous. So that's why -- at that time, Elkhart
16 didn't have a Haz-Mat team. They had South Bend's
17 Haz-Mat come out there. They tried to patch it
18 with Plug'n Dyke, but it wouldn't stick. They
19 moved the car over from this one Track 15 over to
20 the other track.

21 Q Hold on one second. Just so we have it for the
22 record, I show you a map marked for identification
23 No. 1, and ask if you that is the map of the
24 general area involved in the Elkhart yard?

25 A Right.

1 Q You started to point to the map as to where this
2 thing occurred?

3 A They call it the junkyard switch. What they did,
4 they pulled it off 15R, the tank car, which is
5 over here, with the stuff venting out of it. Then
6 they put it over here to the junkyard switch and
7 that's where we backed in there with the crane and
8 picked it up.

9 Q So it would go to one end?

10 A Yes, so it would go down to the other end.

11 Q Then what happened with the car?

12 A We left the truck under it, set it on blocks so it
13 would stay like that, and then people from the
14 chemical company come and sucked it all out, what
15 was left in it and stuff. After that, I don't
16 know where they sent the car.

17 Q Do you know how long the car remained in that
18 area?

19 A No, I don't.

20 Q Take that pen, if you would, and put a No. 1 with
21 a circle in the area of the junkyard where they
22 had the car?

23 A (Witness complies.)

24 Q Are you familiar with any other spills, either as
25 a fireman or working for Conrail, that may have

1 occurred?

2 A Diesel fuel. I don't remember what year that
3 was. That had to happen back in '70 sometime.
4 Somebody let some engines go out of the engine
5 house up through here (indicating) and they
6 derailed. I think they derailed right here
7 (indicating). It was right across from the
8 Redwood Restaurant, but the derailed caught on
9 fire, the diesel fuel caught on fire, and the fire
10 department got called out for that.

11 Q Would you put a No. 2 in a circle?

12 A (Witness complies.) That had to be back in early
13 -- had to be back in the early seventies. I think
14 we were still Penn Central then.

15 Q Did any spills occur, to your knowledge, in the
16 receiving yard that you had to respond to either
17 as a crane operator or fireman?

18 A No, not that I know of.

19 Q How about in the classification yard?

20 A No. This animal fat one time, right about in Group
21 1, right about in this area here. It was a tank
22 carload of animal fat. It was pretty greasy trying
23 to rerail it and it derailed, busting the tank
24 open, animal fat.

25 Q That would be in the area that is marked Group --

1 A Group 1, yeah.

2 Q How about in the departure yards? Have you
3 responded to any events that took place in those
4 areas involving tank cars and spills?

5 A No spills. Been on a lot of derailments, but no
6 spills.

7 Q Or ventings?

8 A No. We had -- it's been about three, four weeks
9 ago, four to six weeks ago, something like that,
10 we had two engines derail and hit together and the
11 diesel fuel was blowing out and they
12 automatically, the superintendent, he called the
13 EPA and then the Haz-Mat team come out and checked
14 it out and they said what they was going to do.
15 They didn't spill that much. They've been pretty
16 good about it, about calling right away if they
17 have a diesel spill or something. And they dug it
18 all up, cleaned it all up.

19 It was right across from the west tower,
20 right here, No. 3. I'll put it right there. Two
21 engines hit together and the diesel derailed and
22 they had to go rerail them. What it did was put a
23 little hole and the Plug'n Dyke wouldn't stick and
24 it kept leaking out.

25 Q If such a thing as Plug'n Dyke didn't work and it

1 kept leaking out, would the company be called to
2 empty the tank out?

3 A Yeah. They called the guy with a truck, and then
4 he sucked it all out, sucked the diesel fuel all
5 out.

6 Q Do you recall the name of the company?

7 A No, I don't. I know he was parked there when we
8 were leaving because we had the engines rerailed
9 and stuff.

10 Q Are you familiar with any incidents -- I think I
11 asked you, but just for my own mind -- in the
12 receiving and the departure yards, other than the
13 one you just told us about?

14 A Hmm-umm. This happened on three and four lead,
15 this here, where two engines hooked together, just
16 coming out, three and four lead.

17 Q I take it that there are different ways of
18 handling, from the safety point of view, different
19 chemicals that might be leaking or venting in
20 these tank cars.

21 What would be the procedure if there was a
22 leak, say an actual leak in the bottom of the tank
23 car and it did contain a hazardous material? What
24 would be the proper thing to do as far as
25 curtailing the leak and/or preventing a

1 catastrophe, if you know?

2 A Well, somebody seen it in a tower or the
3 trainmaster would probably call the Haz-Mat team
4 and come out and see if they could seal it off.
5 They'd probably tell them how to do it, you know,
6 if they didn't know how to do it, probably tell
7 them how to try to fix it.

8 Q I'm talking from your own personal knowledge now,
9 in view of the courses that you took with the fire
10 department, et cetera.

11 Suppose the spill was something like naptha
12 or -- would you use one form of disbursing the
13 naptha? When I say one form, would you use one
14 form such as using a hose in water or would you
15 use another chemical substance or ingredient to
16 control the spread or the spill?

17 A I don't know.

18 Q If it's a leak, would they build a dyke around
19 it --

20 A Yeah, they did.

21 Q -- so the spill wouldn't continue to spread?

22 A Yes.

23 Q Is that the proper procedure to follow?

24 A I don't know what their proper procedure is, but
25 what we do is -- if they called us, that's what we

1 would do to keep it from spreading.

2 Q Are there certain chemicals that you would not use
3 a hose and water on, for example, if it was
4 leaking or venting?

5 A Certain ones you have to use foam on, but I can't
6 tell you right now. Somebody higher up tells us
7 that, you know.

8 Q Do you know what the foam consists of?

9 A No.

10 Q How does the foam come? Does it come in a tank?

11 A It comes in -- like when we foam down gasoline or
12 something like that, we got like a five gallon of
13 it or something like that, or ten gallon, whatever
14 you got, like on our trucks we carry, some of the
15 trucks would carry, I think, five or ten gallons
16 of it and then some of our trucks have got
17 automatic dump that you dump it. It's in the
18 truck already and you dump it into the tank, which
19 is a thousand gallons, and then you shoot it right
20 out of the hose. So that's mixed with water.

21 See, everybody thinks, everybody thinks that
22 you're spraying foam on there and this big white
23 foam is coming out, but they don't realize there's
24 water mixed with it. Water is still going down.

25 We had a big fire behind the dormitory,

1 Superior Oil, about a hundred different
2 chemicals. We fought that all night long, had
3 about fifteen fire departments, and that water
4 just went in the ground all night long, couldn't
5 get it out. Finally, about seven o'clock in the
6 morning, he brought foam from all over the place,
7 like South Bend airport and other places, so we
8 would have enough foam. The foam would smother
9 it, put it completely out.

10 Q Where would that be?

11 A Oh, I'd say about right here (indicating). It's a
12 building, No. 4. That was Superior Oil. They
13 said, they told us it had about a hundred
14 different chemicals in it. I can't remember the
15 date that happened.

16 I got blowed out of it. We went in. The
17 fire was at the back. We was going to try to go
18 through and push it back where it was at and all
19 of a sudden, it blew up. Fifty-gallon barrels
20 kept blowing out at us.

21 Q What was in the 50-gallon barrels?

22 A I don't know. I haven't the slightest idea. All I
23 know, it was a heck of a fire.

24 Q Can you give us any idea when that occurred,
25 eighties or seventies?

1 A Had to be in the eighties, '86 or '87, somewhere
2 around in that area, probably.

3 Q Any other instances of fires within the yard
4 itself?

5 A No, not yard fires. Back in the seventies --
6 here's the diesel house, right here. I'll put
7 down No. 5?

8 Q Please.

9 A (Witness complies.) That Global Glass burnt and
10 they had a whole bunch of chemicals in it. That
11 burnt, it would be around '80 someplace, '79 or
12 '80, Global Glass. They rebuilt it, and that was
13 an awesome fire, too, and a lot of chemicals, also
14 went down in the ground.

15 Q Specifically within the yard itself, the area
16 either --

17 A The reason I'm saying this is because these places
18 are still closed. This is U.S. 33 right here and
19 Global Glass was right there on County Road 3,
20 because I live right there, and that place is
21 right behind the dormitory, this other place that
22 burned.

23 Q Any others?

24 A No, no other spills or anything like that that I
25 can think of. See, this is the tower right here,

1 about right in here on U.S. 33 is a salt pile, was
2 there for about twenty-five years or so, that had
3 green stuff or blue stuff in it to keep it -- they
4 used it on the roads to keep it thawed. That
5 stuff sat there for years and years and went down
6 in the ground.

7 When I went to a meeting at the school about
8 the water, and we kept mentioning that salt pile,
9 and they got rid of it.

10 Q No. 6, if you would?

11 A (Witness complies.) That was the salt pile because
12 that water thing, I went to one of the meetings at
13 the school, the water thing come through here,
14 underground water thing come through here, and
15 that salt pile was kind of almost right under it,
16 and over on County Road 1 in this area here, all
17 them people's water is bad and they got them
18 filters, filters now.

19 Q You're indicating the water coming from the --

20 A I seen it on that map. It's underground. I don't
21 know what you call it, underground water table or
22 something like that that goes underneath Conrail,
23 comes out here somewhere (indicating). I seen it
24 on their map that they had because the EPA and
25 stuff was there and we went to the school because

1 we were concerned about our water being bad.

2 Q This was a presentation at the local school for
3 people in the neighborhood?

4 A Yeah.

5 MR. ERMILIO: Do you have a time?

6 BY MR. RUVOLO:

7 Q Do you know approximately when this occurred?

8 A I'd say three years ago, two and a half years ago,
9 three years ago. And I told them about that salt
10 pile, and not too long after that that salt pile
11 was gone. All they got there now is sand. That
12 was there for, oh, twenty, twenty-five years, at
13 least.

14 Q Have you had --

15 A Our fire station is right here, see. That's why I
16 knew about it all the time.

17 Q Have you had occasion during your work at the yard
18 to respond to fires?

19 A Box cars, we've had a couple of box car fires.
20 We've had paper on fire, caught the rep track,
21 couple of paper cars have caught on fire. I
22 wouldn't be able to tell you the exact dates or
23 anything. We'd have to look at our reports.

24 Q Would most of the incidents be involved around the
25 car shop and repair shop?

1 A I remember a couple at the car shop. Then we've
2 had a couple of gondolas on the inbound runner.
3 They come in in steel cars and catch the wooden
4 floor on fire. We'd respond to them out here on
5 the runner coming in, put them out.

6 Q I take it from your fireman's training, there are
7 different ways for treating different types of
8 fires?

9 A Right.

10 Q Can you tell us about some of them? We all know
11 about a hose and water. What else is used?

12 A Dry chemicals, "halon".

13 Q How do you spell that?

14 A I don't know how to spell it. Halon is for
15 computers, so you don't wreck them as bad, for
16 computer fires and stuff like that. A lot of
17 places that's got a lot of computers has got that
18 in their buildings.

19 Q Do you know what that consists of?

20 A No, I don't.

21 Q Are you aware of any instances where that would
22 have been used within the yard, any computer
23 there?

24 A No.

25 MR. CUNNINGHAM: Peter, where are

1 we heading here again?

2 MR. RUVOLO: Substances used to
3 put out fires.

4 BY MR. RUVOLO:

5 Q What else did you use? What is in fire
6 extinguishers; do you know?

7 A CO2 in fire extinguishers.

8 Q Any chemicals used other than the ones you've told
9 us about?

10 A Not that I know of.

11 Q In your work, in your career with Penn Central and
12 Conrail, did you have occasion to do some cleaning
13 work of cars, for example?

14 A Yeah, at the cleaning track, I washed cars out,
15 stuff that they used to use a fire hose and they
16 used to use a truck. They used to have a truck
17 with a tank on the back of it and spray.

18 Q Mostly water?

19 A Water, yeah.

20 Q Did you use any disinfectants?

21 A Not that I know of.

22 MR. ERMILIO: Peter, are you
23 intentionally limiting the scope of
24 your question to Penn Central and
25 Conrail?

1 MR. RUVOLO: Yeah, to his
2 knowledge.

3 BY MR. RUVOLO:

4 Q We've heard testimony that on occasion some old
5 ties were buried in an area within the yard. Were
6 there any fires involving the old ties?

7 A Ties.

8 Q Yes, on occasion?

9 A Yeah.

10 Q Those ties had creosol?

11 A Yeah.

12 Q How would you put out a fire such as that?

13 A Just used water.

14 Q Just water?

15 A It would put them out. We had -- like I say, I
16 don't know the dates, but I can remember us going
17 there and putting them out. Railroad ties, now
18 that you mention it. This is the rep -- okay, I'd
19 say about right in this area, there is a road that
20 comes down through here. I'd say back in this
21 area here, they used to have a lot of railroad
22 ties back there. They caught on fire a couple of
23 times. They went out there.

24 Railroad ties caught on fire there and then,
25 they used to have a metal shanty, called it a

1 metal shanty, right in here, had a bunch of
2 railroad ties right beside it, brand new ones.
3 Those caught on fire once, too, and burnt the shed
4 down, too. It was a little shanty and the railroad
5 ties was right there, caught on fire and burnt
6 that whole thing up.

7 Q Put an 8 there.

8 A (Witness complies.)

9 Q To your knowledge, are any chemicals kept at
10 various areas within the yard?

11 A Chemicals?

12 Q Chemical substances?

13 A Do you include like prophylene --

14 Q Yes.

15 A -- stuff like that?

16 Q As contrasted with journal oil or lubricating oil?

17 A Oh, journal oil?

18 Q I know about that. Other than journal oil and
19 lubricating oil and grease, any chemicals?

20 A I don't know of any chemicals.

21 Q I know we also would agree that gasoline is kept
22 around for use in trucks or cars?

23 A Yeah. No chemicals that I know of.

24 Q As a crane operator, not as a fireman, have you
25 had occasion to respond to spills of hazardous

1 materials coming out of tank cars that may have
2 been derailed, for example?

3 A No. Like I said, that one was bent, but it wasn't
4 derailed. It was just cracked.

5 Q I'm looking for something that may have occurred,
6 if it did, within the classification yard, say
7 within the humping operation?

8 A No.

9 Q Other than the one accident or incident that you
10 told us about with Burlington Northern, are you
11 familiar with any other major incidents or
12 accidents that occurred within the yard?

13 A Not within the yard, no, not having hazardous
14 materials or anything like that. We have had bad
15 derailments in the yard, but not including tank
16 cars.

17 Q That you are aware of?

18 A Yeah, that I'm aware of. If it had a tank car
19 involved, I'd have been aware of it.

20 Q Because if not for your job --

21 A Wrecking, right.

22 Q Not for the job, you would be notified through the
23 fire department?

24 A Right.

25 Q I want you to think of the question for the entire

1 period that you worked for the railroad. In the
2 sixties, would the same be true, that you're not
3 aware of any spills or any incidents?

4 A No.

5 Q Then for the seventies period, when you were
6 working for Penn Central, you don't recall or are
7 aware of anything or any events?

8 A No spills, no, I don't recall.

9 Q Since '76, other than the one you told us about,
10 Burlington Northern?

11 A That's the only one I'm aware of.

12 MR. RUVOLO: I have no further
13 questions.

14 MR. CUNNINGHAM: I have a few, Mr.
15 Newland. I'm Mr. Cunningham and I
16 represent one of your former employers,
17 Penn Central.

18 CROSS EXAMINATION

19 BY MR. CUNNINGHAM:

20 Q It's my understanding that you were first hired by
21 New York Central in October of 1966?

22 A Right.

23 Q Before that, you have no knowledge whatsoever of
24 what happened at the Elkhart yard; is that right?

25 A Right.

1 Q Since October '66, based on testimony you've given
2 here earlier, you know of no spill involving any
3 substance, other than perhaps the diesel fuel
4 spill, although there was a venting of a
5 Burlington Northern railroad car which you also
6 witnessed; but other than that, nothing? Is that
7 right?

8 A Right.

9 Q Do you remember who the terminal master, terminal
10 superintendent was when you were hired in 1966 in
11 Elkhart?

12 A Boy, that's a hard one because that was
13 transportation. I wouldn't know. I just know
14 that the general foreman that hired me was Don
15 Lewis and he got killed in a car wreck. He was
16 the only general foreman we had back then.

17 Q As far as the boss of the whole yard, so-called
18 terminal --

19 A Terminal superintendent, no, I don't recollect who
20 it was back then.

21 Q Do you remember the names of any of the
22 superintendents of the terminal before 1970?

23 A I don't know whether -- I think Fred Hand used to
24 be one. He is the hump yardmaster now. I think
25 he used to be one, but I don't know if he was

1 assistant or head of it, but I know he used to be
2 like a terminal superintendent like, but he's a
3 hump yardmaster now.

4 Q Does he live in Elkhart?

5 A Yeah.

6 Q Is he retired now?

7 A No. He works at the hump. He's a hump
8 yardmaster.

9 Q Fred Hand?

10 A As a matter of fact, he's working today. Yeah,
11 Fred Hand. Fred Barclay was a superintendent, but
12 years, I don't know. He was a superintendent.

13 Q Under Penn Central, you think?

14 A No, I don't think so. I think it was Conrail.

15 Q What about Joe Mayo? Ever heard of him?

16 A Joe Mayo, yes.

17 Q Is he still around?

18 A Yeah, down in Nappanee. I know a guy at the flea
19 market down there that sells stuff.

20 Q He's retired now?

21 A I think he's retired, yeah. He no longer works
22 the railroad. He's retired.

23 Q He was a yardmaster at one time?

24 A I'm trying to think if he was or not. I know he
25 used to work down on the ground. He used to be a

1 switchman or something. He was a different
2 department than me. I just know him from being
3 out there.

4 Q What about Phil Andreson?

5 A He was the western yardmaster.

6 Q Is he still around?

7 A No, he's retired. I don't know if he died or not.

8 Q Would it have been Elkhart?

9 A I think he lived in Elkhart.

10 Q Dave Garmen?

11 A Dave Garmen, yes, he used to be hump yardmaster,
12 third trick.

13 Q Can you tell us whether he's now retired?

14 A I don't know.

15 Q Do you know anything about where he is now?

16 A No.

17 Q Pete Froelich?

18 A No.

19 Q Do you know anything about carbon tetrachloride?

20 A No.

21 Q Ever heard of it?

22 A No -- yeah, I've heard of it, heard of it. I have
23 heard of it, but I've never seen it, I don't
24 think.

25 Q In connection with spills, you have not heard of

1 any incidents involving the spill of carbon
2 tetrachloride of any tank car?

3 A Unless that tank car that we did down here had
4 it. I don't know what was in it. I can't
5 remember. I can't recollect what was in it.

6 Q This was the Burlington Northern railroad car?

7 A No. It come from the Burlington.

8 Q That is the incident you're referring to?

9 A Right.

10 Q That would have been when, in the late seventies?

11 A No, it was the eighties.

12 Q Do you know a Claude Bruton?

13 A No.

14 Q What about Ted Berkshire?

15 A Ted Bershire?

16 Q Yes?

17 A He's a car man.

18 Q Do you know him?

19 A Yeah.

20 Q Have you talked to him about this case?

21 A No. I don't even know where he's at, to tell you
22 the truth. As a matter of fact, I don't know if
23 he is working back in Elkhart. I know he was laid
24 off or something, might have been in Burns Harbor.

25 Q From what I gather with regard to the cleaning of

1 concrete pads, you don't have any knowledge of
2 what kind of substance was used?

3 A No.

4 Q You weren't really involved in that?

5 A Yeah, back -- we used to wash the rep down, fire
6 hose. I used to do that.

7 Q Do you know what was used to do that?

8 A Fifty-gallon barrel of some kind of soap, spread
9 it on, you wait about an hour or two hours, then
10 you wash it off with a fire hose.

11 MR. CUNNINGHAM: That's all.

12 Thank you.

13 MR. ERMILIO: I have a few
14 questions.

15 CROSS EXAMINATION

16 BY MR. ERMILIO:

17 Q Mr. Newland, when you started in '66, were you
18 responsible for washing the floor of the car shop,
19 the rep track?

20 A Yeah, all of us that worked on the ep track helped
21 out, the laborers -- see, I started out as a
22 laborer, motor trucker. As a matter of fact, I
23 remember putting a 50-gallon barrel in the fork
24 truck and putting this thing in where it would
25 spray it, just a pipe with holes in it, and keep

1 the fork truck going back and forth on the rep
2 track, putting the soap on there and wait for an
3 hour or so. The car men would help wash it down,
4 too. Actually, they waited for about an hour or so
5 and then got out there with brushes, you know,
6 like brooms and stuff, because it was so dirty.

7 Q How often did you wash that?

8 A Lot of times because you want to keep it clean
9 because the big shots come around.

10 Q When you say a lot of times. How many do you
11 mean?

12 A I don't remember how many times.

13 Q Once a day, once a month?

14 A Probably, estimate, so dirty back then, probably
15 once a week, somewhere around in there, maybe.

16 Q You said it was so dirty back then. Dirtier than
17 it gets now?

18 A Yeah, because back then we had journal boxes, had
19 journal box pads. If you changed a pair of wheels
20 or they had a hot box on a car, they would bring
21 it in the rep track and we had to change the
22 wheels. Back then, we didn't have roller bearing
23 wheels back then. I forget when they first
24 started coming out with roller bearings, but
25 mostly everything was journal box. You had to

1 repack it. They called it repack. It means put a
2 new pad in, new brass, you had to clean the box
3 out with solvent, spray the solvent stuff on it
4 and take the old pad. And we had these pans that
5 you pulled the pad out, put the pad in the pans,
6 and then take them and throw them in this hopper
7 and the oil would get all over the place.

8 Q What about the solvent that you used?

9 A You'd have to wash it down because it was so
10 dirty. I mean we were dirty dirty, wrecked our
11 clothes and stuff.

12 Q You said the oil from the journal boxes would get
13 all over the place?

14 A Yeah.

15 Q What about the solvent that you used to clean out
16 the journal boxes?

17 A I don't know what kind of solvent it was or
18 anything like that. It was an overhead thing, had
19 a long nozzle on it. We got it in there and
20 cleaned it out and everything and put a new pad in
21 and put new oil in it.

22 Q Let's step back a little bit. Would the solvent
23 get anywhere other than inside the journal box?

24 A It'd spray all over the place.

25 Q All over the floor?

- 1 A Yeah.
- 2 Q Is that what you would be cleaning up when you
3 washed the floor, the solvent as well as the oil?
- 4 A Solvent and the oil, yeah.
- 5 Q Where did the solvent and the oil go when you
6 washed the floor of the car shop?
- 7 A Outside the concrete into the gravel. At that
8 time, it was like stones out there and stones are
9 on top of dirt and you'd wash it off the cement
10 out there and out this way and out.
- 11 Q Onto the dirt, and then what would happen to it?
- 12 A Nothing. I mean I don't know, just lay there.
- 13 Q Would it soak into the ground?
- 14 A I imagine.
- 15 Q So it wouldn't pool up and you wouldn't clean up
16 that?
- 17 A No.
- 18 Q You wouldn't clean up the gravel or the pool of
19 water containing the solvent and the the oil?
- 20 A No.
- 21 Q Still back in that same time period in the sixties
22 when you were there, '66, you mentioned that there
23 was an overhead system that the solvent came from.
24 Can you describe that for me?
- 25 A It was the hose that come down. I can't describe

1 what was up above.

2 Q Just the best you can.

3 A There was a hose that come down. . . Then like a
4 handle gun that you squeeze was on it. There was
5 a long metal nozzle like, and when it shot out,
6 shot like a spray out and, you know, like a fog
7 pattern, I guess you would call it. I guess the
8 fire department called it a fog pattern, like
9 that, and spray it all off. Plus when you did a
10 repack, when you did a repack, too, you have to
11 check the journals on the outside on the truck
12 side to make sure there wasn't no cracks, so you'd
13 spray all that stuff off, too. You'd spray all
14 that grease and stuff off.

15 Q Outside the journal box?

16 A Outside the journal box. Then you have to look to
17 make sure there wasn't any cracks or anything like
18 that. If the truck side was cracked or something
19 like that, we'd have to put a new truck side on,
20 too.

21 Q Is there a difference between the solvent you're
22 talking about here that was used to clean the
23 journal boxes and the cleaner you used the on the
24 floor of the car shop?

25 A Say that again.

1 Q Was it the same liquid you used to clean the
2 journal boxes and to clean the floor of the car
3 shop?

4 A I have no idea. All I know is it's a 50-gallon
5 barrel was soapy.

6 Q To clean the --

7 A To clean the car shop floor, yeah. We'd move
8 everything out. We'd take the fork truck and move
9 everything off the car shop floor and then spread
10 that soap down.

11 Q What did this look like or smell like? Can you
12 describe it?

13 A The soap itself?

14 Q The floor cleaning soap. Was it clear?

15 A Kind of brownish clear. It was clear, like,
16 looked like a soap coming out of there.

17 Q Turning to the solvent that you used to clean the
18 journal boxes.

19 A That was a clearish color.

20 Q Did it have an odor or fumes?

21 A I don't recall.

22 Q Would you say you think they're the same, the
23 solvent and this floor cleaner, or were they
24 different?

25 A No, they were different. I don't think they were

1 the same.

2 Q Do you still use the solvent out at the yard?

3 A Because that solvent stuff was watery, more
4 watery, the solvent stuff was more watery, the
5 soap that come out of that barrel, the floors was
6 soapy like.

7 Q Do you still use that solvent today?

8 A No.

9 Q Do you still clean journal boxes with the solvent?

10 A No.

11 Q When was the last time solvent was used in the car
12 shop?

13 A Probably around '72 or '73, somewhere around
14 there, about that, '72, '73.

15 Q After '72 or '73, did you clean, continue to clean
16 journal boxes in any manner?

17 A Oh, I know what they used. After they quit doing
18 that, then they started just taking rags and
19 wiping them out.

20 Q After they quit using the solvent?

21 A Yeah.

22 Q They used rags? After '72 or '73, they used rags
23 to clean the journal boxes?

24 A Yeah. I remember wiping them out. I worked there
25 off and on. Sometime I worked there, sometimes I

1 didn't.

2 Q Did you use any liquids with the rags to clean the
3 journal boxes?

4 A No. I wish I could remember the date the roller
5 bearings started coming in because they started
6 changing over to roller bearings sometime or
7 other. I worked all over out in the yards, too.

8 Q Okay. Did you ever use the solvent we discussed
9 that you had used to clean the journal boxes, did
10 you ever use that after Conrail came in '76 or
11 later?

12 A No. I'm trying to think of the people. Some
13 people come in and tore it all out.

14 Q Tore what out?

15 A Those pipes and stuff, solvent.

16 Q Was that torn out before '76?

17 A Yeah, it had to be the early seventies.

18 Q It was torn out in the early seventies?

19 A Yeah.

20 MR. ERMILIO: I have no further
21 questions.

22 RECROSS EXAMINATION

23 BY MR. CUNNINGHAM:

24 Q You have no knowledge, I take it, of what the
25 contents of the cleaner that was used on the floor

1 was, do you?

2 A No, sir.

3 Q That would also be true of what you have described
4 as a solvent?

5 A Right. All I know is they called it a solvent.
6 They said solvent, make sure you clean -- and back
7 then, make sure you clean them boxes out good and
8 the sides out good because they want to check and
9 make sure there weren't any cracks, because FRA
10 and people like that would come in and AR or
11 something like that, AR inspectors or something
12 would come in and they'd check you and make sure
13 you're doing it right, cleaning them out right and
14 everything.

15 Q With regard to the solvent, you don't think it had
16 any odor at all?

17 A I don't recall.

18 Q Vapors?

19 A I don't recall it having vapors or odors to it.

20 Q Are you certain of the dates when the solvent was
21 discontinued or is it just a general idea that it
22 stopped sometime in the seventies?

23 A I'm trying to think because I wasn't foreman back
24 then. It had to be early seventies because I used
25 to have to bill, had to bill the things we did to

1 the cars, so it had to be right around '72, '73
2 that we quit using it.

3 Q This was under Penn Central? Are you saying that
4 there was no Conrail involved with that at all?

5 A Well, Conrail, we didn't get Conrail until '76, so
6 I don't think, I'm pretty sure we didn't use it on
7 Conrail.

8 Q But you continued to clean journal boxes even till
9 today?

10 A Once in a great while they will get one now, but
11 they're outlawing them and stuff. As a matter of
12 fact, I think you can only run journal boxes on
13 your own road now, pretty sure, but I forget what
14 the date is, but they're supposed to not even have
15 them anymore.

16 Q Do you know how much of this solvent was used?
17 Pretty hard to describe that?

18 A Pretty hard to describe that because it just
19 depend how dirty they were, how thick the stuff
20 was built on. Sometimes you'd have to use the
21 scraper and scrape the stuff off and then spray
22 them.

23 Q When they discontinued the solvent, it must have
24 taken something else to clean those, other than
25 just rags?

1 A When they discontinued the solvent? Not that I'm
2 aware of. They just had to scrape them down real
3 good.

4 Q Nothing else was used at all?

5 A No, I didn't use nothing else. We used rags and
6 scraped them.

7 Q Are you sure of that?

8 A Yeah, we'd put that pan under there and scraped
9 them with scrapers, scraped them off real good.

10 Q As far as what was in there, you don't know?

11 A No. They called it solvent.

12 Q Did you see what it came out of, other than being
13 in overhead --

14 A No, I didn't. All I know, it come out of the end
15 of the gun, just shot.

16 Q Who was it that bought that material? Who would
17 be responsible for putting that up there or
18 supplying your department?

19 A I don't know who would be responsible. I don't
20 know who brought it or how they even got it up in
21 there.

22 Q You did some inspecting of cars, is that right?

23 A Yeah.

24 Q Let's talk about the time when you first started,
25 and let's say there was a spill then. Would there

1 be some way that a Penn Central employee would
2 report an incident in the yard? Who would you
3 tell about it?

4 A Say you was inspecting a train?

5 Q Say you inspected a train, you came across a leaky
6 tank car.

7 A You'd holler on the radio. See, back then, too, we
8 didn't have as many radios. If they found
9 something, they might have to go to a telephone or
10 something like that to report something like that.

11 But I don't remember very many incidents being
12 reported like that. Now if you found something
13 else, say an inbound train coming in and you're
14 down there bleeding it, a tank car was leaking,
15 you'd get on the radio and holler, call the train
16 master, hey, got a tank car leaking, tell him the
17 number of the car. They'd see what it was loaded
18 with, if it was a hazard or not. Say it was bad
19 stuff, they'd probably call the Elkhart Haz-Mat
20 team.

21 Q Let's talk about back in the area of 1965 to '70,
22 did the fire department get involved in those
23 days?

24 A Yeah.

25 Q There was a number that you would call?

1 A Yeah. Back then, they didn't have the 911, they'd
2 phone 522 or something, what it was.

3 Q But that was a Penn Central ruling?

4 A What do you mean?

5 Q I mean Penn Central, for the safety of the
6 employees, told you to report and call that
7 number, didn't they?

8 A No, if you found -- I suppose if you found
9 something back then, you'd tell the car shop or
10 yardmaster and they would call the fire
11 department. I don't remember any major tank car
12 leaks in the yard since I've been there.

13 Q There was a rule, though, wasn't there, wasn't it
14 promulgated with the employees a certain telephone
15 number was given to you?

16 A No, not that I know of. All I know it was posted.

17 Q That's what I meant.

18 A To call, the fire department number was.

19 Q Even in those days?

20 A Yeah. If there was a fire, yeah, if a box car
21 catch on fire, what have you.

22 Q Was there a number in Philadelphia of the
23 hazardous substance manager? Do you remember
24 anything like that?

25 A No, I don't.

1 Q What about paperwork for something that you
2 mentioned about a leaking tank car? Would you
3 have something in writing that you would have to
4 fill out?

5 A I don't know because I never found one.

6 Q You don't recall any procedure that was in place
7 at that time?

8 A No.

9 MR. CUNNINGHAM: I think that's
10 all.

11 MR. RUVOLO: Just a couple of
12 things.

13 REDIRECT EXAMINATION

14 BY MR. RUVOLO:

15 Q Did you have occasion to work on other vehicles
16 other than cars when you were at the yards, such
17 as the crane or you mentioned forklift? Did you
18 ever work on their motors or engines or anything
19 of that nature?

20 A No. Back in New York Central and Penn Central and
21 part of Conrail, we had a mechanic do it, but now
22 they contract it out, like they'll send the trucks
23 over to Gates or someplace else to get them
24 fixed. Our Holmes crane, they send the Holmes
25 crane out someplace else to fix it. Back then, we

1 had a mechanic. He retired and then this other
2 guy took over.

3 If we had something like it wouldn't start
4 or something like that, we'd call him out. He'd
5 look at the fork trucks and everything like that.
6 As a matter of fact, his name, the mechanic is Rex
7 Anderson. He's retired.

8 Q Do you know where he lives these days?

9 A Florida, last I knew. He's a mechanic. He'd be
10 able to tell you something about that, what he did
11 to them, the equipment.

12 Q Do you know of any usage of electrical cleaners,
13 either for cars or for engines or anything?

14 A No.

15 Q Things like de-icers if a car wouldn't start or
16 anything like that?

17 A No.

18 Q Just a couple of questions. Earlier, you
19 mentioned about the tank cars. As I understand
20 it, there is an inside tank, and that is an
21 insulation, and then there is an outside tank?

22 A Um-hmm.

23 Q The instance that you described for us, I think
24 you told us -- and stop me if I'm wrong -- that
25 the inside tank was leaking?

1 A Yeah.

2 Q Then it went into the insulation?

3 A Yeah.

4 Q And then there was leaks?

5 A Yes, and cracks in the outside and then venting
6 out. Then they'd see it was kind of like when
7 it's like damp outside, you can see it a lot
8 better then, like if it was real warm outside, and
9 it so happened to be damp that morning.

10 Q Would there be, in an instance such as that, with
11 the venting, would there be any spillage at all
12 involved, either dripping drops or would it be
13 liquified and then into the ground or would it all
14 go into the air?

15 A No, I'd say it could leak. I'd say something like
16 that could leak down to the ground. I didn't get
17 up there soon enough to see if it leaked to the
18 grown because they'd already tried to put that
19 Plug'n Dyke on there and they said it wasn't
20 sticking. I didn't see anything leaking out of it
21 or anything like that.

22 We put the Haz-Mat suits on and backed up to
23 it with the crane and that was it.

24 Q Your major concern was stopping the vapors from
25 going out --

1 A Yes, pick the tank car up so that it would all go
2 down to the other end.

3 Q Do you know what the insulation is made out of?

4 A No, I don't.

5 MR. RUVOLO: No further
6 questions.

7 MR. CUNNINGHAM: Nothing further.

8 (Deposition concluded at 2:30 p.m.)

9 + + + oOo + + +

10

11

LARRY NEWLAND

12

13

SUBSCRIBED AND SWORN to before me
this _____ day of _____
1993.

14

15

16

Notary Public, State of Indiana
County of Residence:
My Commission Expires:

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, DOROTHY L. HOADE, being a Notary Public in and for the County of St. Joseph and State of Indiana, duly authorized to administer oaths, do hereby certify there appeared before me at the said time and place LARRY NEWLAND, who was first duly sworn by me to testify the truth and nothing but the truth in response to questions propounded at the taking of the foregoing deposition.

I further certify that I then and there reported in machine shorthand the proceedings at said time and place; that the proceedings were then reduced to typewriting from my original shorthand notes; and that the foregoing typewritten transcript is a true and accurate record thereof.

I further certify that the deposition was read and signed by the deponent in the presence of a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this ___ day of _____ A.D., 1993.

DOROTHY L. HOADE
Notary Public, State of Indiana
Residence: St. Joseph County
My commission expires 3-12-95